



NCURA

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APPENDIX 7

Revenue Procedure 97-14

Internal Revenue Service

1997-5 I.R.B. 20

26 CFR 601.601: Rules and regulations. (Also Part I, §§ 103, 141, 145; 1.141-3, 1.145-2.)

Rev. Proc. 97-14

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth conditions under which a research agreement does not result in private business use under § 141(b) of the Internal Revenue Code of 1986. This revenue procedure also applies to determinations of whether a research agreement causes the test in § 145(a)(2)(B) of the 1986 Code to be met for qualified 501(c)(3) bonds.

SECTION 2. BACKGROUND

.01 Private Business Use .

(1) Under § 103(a) of the 1986 Code, gross income does not include interest on any state or local bond. Under § 103(b)(1) of the 1986 Code, however, § 103(a) of the 1986 Code does not apply to a private activity bond, unless it is a qualified bond under § 141(e) of the 1986 Code. Section 141(a)(1) of the 1986 Code defines “private activity bond” as any bond issued as part of an issue that meets both the private business use and the private security or payment tests. Under § 141(b)(1) of the 1986 Code, an issue generally meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use. Under § 141(b)(6)(A) of the 1986 Code, private business use means direct or indirect use in a trade or business carried on by any person other than a governmental unit. Section 145(a) of the 1986 Code also applies the private business use test of § 141(b)(1) of the 1986 Code, with certain modifications.

(2) Corresponding provisions of the Internal Revenue Code of 1954 set forth the requirements for the exclusion from gross income of the interest on state or local bonds. For purposes of this revenue procedure, any reference to a 1986 Code provision includes a reference to the corresponding provision, if any, under the 1954 Code.

.02 Section 1.141-3(b)(6)(i) of the Income Tax Regulations provides, in general, that an agreement by a nongovernmental person to sponsor research performed by a governmental person may result in private business use of the property used for the research, based on all of the facts and circumstances.

.03 Section 1.141-3(b)(6)(ii) provides in general that a research agreement with respect to financed property results in private business use of that property if the sponsor is treated as the lessee or owner of financed property for federal income tax purposes.

.04 Section 1.145-2(a) provides generally that §§ 1.141-0 through 1.141-15 apply to § 145(a) of the 1986 Code.

.05 Section 1.145-2(b)(1) provides that, in applying §§ 1.141-0 through 1.141-15 to § 145(a) of the 1986 Code, references to governmental persons include section 501(c)(3) organizations with respect to their activities that do not constitute unrelated trades or businesses under § 513(a) of the 1986 Code.

SECTION 3. DEFINITIONS

.01 *Basic research*, for purposes of § 141 of the 1986 Code, means any original investigation for the advancement of scientific knowledge not having a specific commercial objective. For example, product testing supporting the trade or business of a specific nongovernmental person is not treated as basic research.

.02 *Qualified user* means any state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof. The term also includes a section 501(c)(3) organization if the financed property is not used in an unrelated trade or business under § 513(a) of the 1986 Code. The term does not include the United States or any agency or instrumentality thereof.

.03 *Sponsor* means any person, other than a qualified user, that supports or sponsors research under a contract.

SECTION 4. SCOPE

This revenue procedure applies when, under a research agreement, a sponsor uses property financed with proceeds of an issue of state or local bonds subject to § 141 or § 145(a)(2)(B) of the 1986 Code.

SECTION 5. OPERATING GUIDELINES FOR RESEARCH AGREEMENTS

.01 *In general* . If a research agreement is described in either section 5.02 or 5.03 of this revenue procedure, the research agreement itself does not result in private business use.

.02 *Corporate-sponsored research* . A research agreement relating to property used for basic research supported or sponsored by a sponsor is described in this section 5.02 if any license or other use of resulting technology by the sponsor is permitted only on the same terms as the recipient would permit that use by any unrelated, non-sponsoring party (that is, the sponsor must pay a competitive price for its use), with the price paid for that use determined at the time the license or other resulting technology is available for use. Although the recipient need not permit persons other than the sponsor to use any license or other resulting technology, the price paid by the sponsor must be no less than the price that would be paid by any nonsponsoring party for those same rights.

.03 *Cooperative research agreements* . A research agreement relating to property used pursuant to a joint industry-governmental cooperative research arrangement is described in this section 5.03 if—

(1) Multiple, unrelated sponsors agree to fund governmentally performed basic research;

(2) The research to be performed and the manner in which it is to be performed (for example, selection of the personnel to perform the research) is determined by the qualified user;

(3) Title to any patent or other product incidentally resulting from the basic research lies exclusively with the qualified user; and

(4) Sponsors are entitled to no more than a nonexclusive, royalty-free license to use the product of any of that research.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for any research agreement entered into on or after May 16, 1997. In addition, an issuer may apply this revenue procedure to any research agreement entered into prior to May 16, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is Loretta J. Finger of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information

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